Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Spectrum Policy Task Force Report	)	ET Docket No. 02-135
	)	

To: Office of Engineering and Technology

COMMENTS OF BELLSOUTH CORPORATION

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EXECUTIVE SUMMARY

BellSouth Corporation ("BellSouth") applauds the work of the Commission's Spectrum Policy Task Force ("SPTF") and its supporting Working Groups in this proceeding over the past year. The SPTF's November 2002 Report is a welcome first step towards a meaningful and comprehensive reevaluation of current spectrum policies and possible reform thereof. BellSouth's interest in the SPTF's recommendations is self-evident - in addition to its 40% ownership interest in Cingular Wireless LLC, BellSouth has spent *hundreds of millions* of dollars to acquire (either at auction or via secondary markets) rights to Multpoint Distribution Service/Instructional Television Service ("MDS/ITFS") and Wireless Communications Service ("WCS") spectrum, with the intent of developing and deploying that spectrum for new wireless services. Any further Commission action in response to the SPTF's findings will have a direct and potentially far-reaching impact on the integrity of that investment.

As a general matter, BellSouth does not take issue with some of the core conclusions in the SPTF Report. For example, BellSouth agrees that the Commission can and should promote flexible use of spectrum, provided that it is coupled with exclusive rights to licensed spectrum. This model has proven successful in, for example, broadband PCS, and should be applied with equal force to other "flexible use" services. By the same token, the Task Force correctly observes that successful implementation of flexible use requires consideration of "how to migrate away from restrictive legacy licensing regimes to more flexible rights models that create opportunities for new, more efficient and beneficial uses." That is precisely the case with respect to MDS/ITFS, which is in the process of evolving from one-way, high-power, line-of-sight distribution of analog multichannel video programming to two-way, non-line of sight, low power cellularized distribution of digital broadband services to both portable and fixed locations. It is for this reason that BellSouth and others have asked the Commission to immediately suspend those of its rules that expose BellSouth and other MDS/ITFS licensees to license forfeiture/cancellation if during the course of transition they discontinue transmissions from what all agree are obsolete facilities.

Equally important, BellSouth wholeheartedly endorses the Task Force's finding that "[r]egardless of how or to whom particular rights are assigned, ensuring that all rights are clearly delineated is important to avoiding disputes, and provides a clear common framework from which spectrum users can negotiate alternative arrangements." This principle is especially critical to incumbents who have spent substantial sums of money for their spectrum at auction or in post-auction secondary markets. Regrettably, however, such certainty has been lacking in the Commission's rules and policies for MDS/ITFS and WCS, with predictable results. Whether it be due to possible reallocation of their spectrum for third generation ("3G") service (as is currently the case for MDS licensees in the 2150-2162 MHz band) or the threat of potentially devastating interference from adjacent users (as in the case of interference from terrestrial DARS repeaters into adjacent WCS spectrum), it is abundantly clear that regulatory uncertainty chills investment in new wireless services and technologies. The Commission should take steps to eliminate such uncertainty as quickly as possible.

In addition, and as discussed in the contemporaneous comments filed by Cingular, the Task Force's "interference temperature" concept is a seriously flawed solution at best. At a minimum, the Commission should not even consider any implementation of the "interference temperature" metric absent an exhaustive and systematic study of the RF noise floor. Moreover, because the Task Force has acknowledged that no single level of interference temperature will

apply universally to all markets, use of the interference temperature metric raises the immediate question of how wireless providers can rationally design networks if they are required to accommodate a multitude of different interference temperature levels, particularly for wide-area services such as broadband PCS.

Finally, because the interference temperature concept could invite more sharing of spectrum between licensed and unlicensed users, application of the interference temperature metric may expose BellSouth and other wireless licensees to a higher risk of interference from Wi-Fi and other unlicensed devices that, as a practical matter, are impossible to remove from the marketplace even after harmful interference has occurred. Also, any shift to a "receiver-centered" methodology for calculating harmful interference must account for the fact that in many cases (*e.g.*, WCS) there simply is no "quick fix" for making receiver equipment more tolerant of harmful interference. The Commission need not and should not attempt to address this problem by adopting and enforcing mandatory receiver standards, which will require long and costly Commission proceedings and are likely to be resolved more efficiently by competitive forces over time.

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COMMENTS

BellSouth Corporation ("BellSouth"), in response to the Office of Engineering and Technology's November 25, 2002 *Public Notice* in the above-captioned proceeding, hereby submits its comments on the November 2002 Report and supporting Working Group Reports issued by the Commission's Spectrum Policy Task Force ("SPTF").[1]

I. INTRODUCTION.

BellSouth's long and intensive involvement in the wireless industry is a matter of public record. In addition to its 40% ownership of Cingular Wireless LLC ("Cingular"), BellSouth is, through its subsidiary BellSouth Wireless Cable, Inc., one of the largest holders of licensed and leased Multipoint Distribution Service ("MDS") and Instructional Fixed Television Service ("ITFS") spectrum in the United States. The company's MDS/ITFS channel rights presently encompass approximately 3.5 million homes in several large markets in Florida, and in Atlanta, New Orleans, and Louisville. In addition, BellSouth won 22 of the 128 Wireless Communications Service ("WCS") authorizations auctioned by the Commission in 1997, for

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[1] Public Notice, *Commission Seeks Public Comment on Spectrum Policy Task Force Report*, ET Docket 02-135, FCC 02-322 (Nov. 25, 2002) ("*Notice*").

which it paid 45 percent of the total net bid for the WCS spectrum.[2] Accordingly, for these reasons and those set forth in the contemporaneous comments submitted in this docket by Cingular, BellSouth has a direct and immediate interest in the SPTF's findings and any further Commission action thereon.

As a general matter, BellSouth does not disagree with some of the core concepts discussed in the SPTF Report - indeed, the Task Force's endorsement of flexible use and its call for a comprehensive review of the Commission's technical rules are welcome developments that will benefit wireless providers and consumers over the next several years. By the same token, the SPTF Report raises serious legal, policy and economic issues that bear directly on the legitimate rights of BellSouth and others who have committed enormous resources to delivering wireless services via existing facilities and market trials of new facilities. Any failure to fully protect those rights will put those investments at risk, compromise the auction process and thwart the development and introduction of new wireless services to the public, which is precisely the opposite of what the Task Force intends to achieve in this proceeding. It is imperative that the Commission keep that overriding principle in mind as it considers the merits of the SPTF Report and any future proceedings related to it.

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[2] *See* Public Notice, *WCS Auction Closes*, DA 97-886 (April 28, 1997). BellSouth's WCS markets include, among others, Washington, DC; Miami, FL; Atlanta, GA; New Orleans, LA; St. Louis, MO; Memphis, TN; Raleigh, NC; and Richmond, VA. Less than two weeks ago, BellSouth announced the initiation of a fixed wireless broadband trial over its WCS spectrum in Daytona, Florida. BellSouth will use the trial results to evaluate the extent to which WCS spectrum could increase its broadband footprint in the company's nine-state telephone service area. *See* "BellSouth Announces Fixed Wireless Broadband Trial in Daytona, Florida," *BellSouth Press Release* (January 13, 2002). The company has already conducted a similar fixed wireless broadband trial over WCS spectrum in Houma, Louisiana. *See* "BellSouth to Launch Trial of High-Speed Wireless Internet Access in Rural Louisiana," *BellSouth Press Release* (Dec. 9, 1998), at http://bellsouthcorp.policy.net/proactive/newsroom/release.vtml?id=30662.

II. DISCUSSION.

A. The Commission's Rules and Policies for Wireless Services Must Be Tailored To Achieve the Maximum Benefits of Flexible Use.

BellSouth agrees that "flexible use," tied to exclusive rights to licensed spectrum, should remain a fundamental objective of the Commission's regulatory paradigm for wireless services.[3] As previously noted by Cingular:

> No single spectrum management model will allow the Commission to meet all of its responsibilities in every band. The best model *in general* will be to grant exclusive flexible licenses that allow market forces to drive how public demand will be met and provide for new services and technologies. Over the last two decades, the Commission has placed considerable reliance on market forces with regard to many aspects of spectrum policy. By and large, this has been beneficial, because markets can respond to the public's need for communications services by matching supply to demand.[4]

At the same time, however, the SPTF correctly observes "most spectrum within the Commission's jurisdiction is already occupied by incumbent spectrum users," and that successful implementation of the flexible use concept requires consideration of "how to migrate away from restrictive legacy licensing regimes to more flexible rights models that create opportunities for new, more efficient and beneficial uses."[5] BellSouth is well aware of this problem the company's experience with the Commission's regulatory regime for MDS/ITFS amply demonstrates why transition mechanisms are absolutely critical to the success of flexible use.

BellSouth initially made substantial investments in MDS/ITFS spectrum to provide digital multichannel video or "wireless cable" service in direct competition with incumbent cable

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[3] *See, e.g.*, SPTF Report at 15.

[4] Comments of Cingular Wireless LLC, ET Docket No. 02-135, at 16 (filed July 8, 2002) (emphasis in original) (the "Cingular SPTF Comments").

[5] SPTF Report at 46.

operators.[6] Unfortunately, the advent of DBS and digital cable, coupled with the line of sight and professional installation requirements imposed to date on MDS/ITFS spectrum, have made the continued use of MDS/ITFS spectrum for video services uneconomic. Accordingly, like many others in the MDS/ITFS industry, BellSouth has been exploring ways to implement the Commission's flexible use policy by deploying MDS/ITFS facilities for advanced services.[7] To that end, BellSouth has joined forces with The Wireless Communications Association International, Inc. ("WCA"), the Catholic Television Network ("CTN"), and the National ITFS Association ("NIA") in submitting a comprehensive rulemaking proposal that, if adopted, will eliminate grossly outdated technical rules for the MDS/ITFS spectrum and facilitate rapid deployment of new wireless services over those frequencies.[8]

The success of the WCA/CTN/NIA proposal, however, is inextricably tied to the adoption of transition mechanisms that will permit BellSouth and others to choose a "migration path" based on sound economic principles and best suited to their individual circumstances. Specifically, WCA/CTN/NIA and BellSouth have asked the Commission to immediately

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[6] In fact, the company invested hundreds of millions of dollars to acquire MDS/ITFS spectrum rights, deploy transmission and reception equipment, establish the operational infrastructure necessary to develop competitive digital wireless cable systems, and provide distance learning facilities and opportunities for local ITFS licensees. *See* Comments of BellSouth Corporation and BellSouth Wireless Cable, Inc., RM-10586, at 2 (filed Nov. 14, 2002) (the "BellSouth MDS/ITFS Rewrite Comments").

[7] *See, e.g., Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems,* 16 FCC Rcd 11222, 11236 (2001) ("[W]e find that adding a mobile allocation to the [MDS/ITFS spectrum at 2500-2690 MHz] would not deter investment in current fixed wireless operations . . . [T]he public interest is served because a flexible allocation allows licensees to make efficient use of spectrum, especially if licensees are given greater freedom in determining the specific services to be offered.") (the "*3G First Report and Order*").

[8] *See* "A Proposal To Revise The MDS and ITFS Regulatory Regime," The Wireless Communications Association International, Inc., Catholic Television Network and The National ITFS Association, RM-10586 (filed Oct. 7, 2002) (the "MDS/ITFS White Paper").

suspend certain of its rules to eliminate any exposure of MDS/ITFS licensees to pre-renewal license forfeiture or cancellation for discontinuing transmissions from what all agree are obsolete facilities as they transition to the new regulatory regime.[9] As discussed in BellSouth's comments in support of the WCA/CTN/NIA proposal, an immediate grant of this relief is essential to permit an orderly transition and, in the words of the SPTF, "maximize the potential public benefits to be derived from spectrum-based services and devices."[10]

B. The Commission Must Reaffirm and Where Necessary Clarify the Rights of Incumbent Wireless Providers and Provide Greater Certainty That Their Investments in Wireless Services Will Not Be Compromised.

BellSouth wholehcartedly agrees that "[r]egardless of how or to whom particular rights are assigned, *ensuring that all rights are clearly delineated is important to avoiding disputes, and provides a clear common framework from which spectrum users can negotiate alternative arrangements.*"[11] This principle is especially important to incumbents who, as in the case of BellSouth's MDS/ITFS and WCS holdings, have spent substantial sums of money for their spectrum at auction or in post-auction secondary markets.[12] Regrettably, however, such certainty has been lacking in the Commission's rules and policies for MDS/ITFS, with

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[9] *See, e.g.*, BellSouth MDS/ITFS Rewrite Comments at 6-10. Specifically, BellSouth has asked the Commission to (1) immediately suspend any enforcement of Sections 21.44(e)(3), 21.303(d) and 74.932(d) of its Rules, and (2) adopt a "substantial service" renewal test for MDS/ITFS (as it has already done for other flexible use services).

[10] *Id.*; *see also* SPTF Report at 12.

[11] *Id.* at 18 (emphasis added).

[12] *See, e.g.*, Cingular SPTF Comments at 26 ("Markets do not work well in allocating rights that may be subject to significant change by regulators in the future. Given that the Commission's spectrum management inherently relies on license auctions as a key market-based component, it is essential that rights and responsibilities be defined without ambiguity. Otherwise, auctions will not result in the licenses going to the parties with the highest and best use of the spectrum.").

predictable results. For the past two years, MDS/ITFS licensees have remained in a state of regulatory limbo while the Commission determines whether and to what extent MDS/ITFS spectrum in the 2150-2162 MHz and 2500-2690 MHz bands should be reallocated and reauctioned for advanced wireless or "3G" services. Indeed, although the Commission's recent *Second Report and Order* in ET Docket No. 00-258 confirms that MDS licensees will be displaced from the 2150-2162 MHz band to accommodate 3G, it fails to identify any replacement spectrum for those licensees and even suggests that the subject will be deferred to a separate proceeding with an indeterminate timeframe.[13]

The need for a clear and immediate resolution of the MDS relocation issue *cannot* be overestimated. Certainly, the record in ET Docket No. 00-258 leaves little doubt that MDS channels 1/2/2A are critical to deployment of new wireless services – in fact, every two-way broadband system launched to date with MDS/ITFS spectrum has utilized MDS channels 1/2/2A, and hundreds of thousands of consumers today are receiving data or video services delivered over that spectrum.[14] Moreover, equipment vendors have halted efforts to develop products capable of operating in the 2150-2162 MHz band, and further deployment of broadband service over that spectrum has been delayed indefinitely. Yet without a Commission ruling as to when and where they will be moved, MDS licensees in the 2150-2162 MHz band (and, ultimately, consumers) will continue to be plagued by the same regulatory uncertainty that the

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[13] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, FCC 02-304, at ¶ 41 (rel. Nov. 15, 2002).

[14] *See, e.g.*, Comments of The Wireless Communications Association International, Inc., ET Docket No. 00-258, at 40-44 (filed Feb. 22, 2001); Comments on Further Notice of Proposed Rulemaking of The Wireless Communications Association International, Inc., ET Docket No. 00-258, at 3-5 (filed Oct. 19, 2001).

Commission already has found to be harmful to the public interest where MDS/ITFS licensees in the 2500-2690 MHz band are concerned.[15] It therefore is imperative that the Commission bring this matter to closure as quickly as possible.

Regulatory uncertainty of a different type continues to exist in the WCS service. By now the Commission is well aware of the ongoing efforts of WCS licensees to protect their spectrum (the 2305-2320 and 2345-2360 MHz bands) from potentially devastating interference caused by high-power terrestrial repeaters used by the satellite Digital Audio Radio Service ("SDARS") at 2320-2345 MHz. The details of those efforts are a matter of public record in IB Docket No. 95-91 and elsewhere, and thus need not be reiterated here.[16] Most important, the current dispute between WCS and SDARS licensees has arisen due to the absence of technical rules governing deployment of terrestrial SDARS repeaters, and the Commission's questionable decision to permit SDARS licensees to deploy those repeaters pursuant to Special Temporary Authority before any rules were adopted.[17] The results, unfortunately, have demonstrated why *post hoc*, itinerant interference protection arrangements are an entirely inadequate solution for wireless providers.[18] Absent greater certainty, it is neither fair nor realistic to expect WCS licensees to

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[15] *See 3G First Report and Order*, n. 7 *supra*.

[16] *See, e.g.*, Letter from Paul J. Sinderbrand, Esq., to William F. Caton, Acting Secretary, Federal Communications Commission, IB Docket No. 95-91 (filed April 1, 2002); Letter from AT&T Wireless Services, Inc., *et al.*, to William F. Caton, Acting Secretary, Federal Communications Commission, IB Docket No. 95-91 (filed Feb. 19, 2002); Comments of BellSouth re: File No. SAT-STA-20010712-00063 (filed Aug. 21, 2001).

[17] *See, e.g., XM Radio Inc. – Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, File No. SAT-STA-20010712-00063, DA 01-2172 (International Bureau, rel. Sept. 17, 2001).

[18] For example, WCS licensees have had difficulty obtaining information as to exactly how and where the SDARS licensees have deployed or intend to deploy their terrestrial repeater networks. *See*
(continued on next page)

make the enormous capital investments necessary to deploy WCS spectrum to its highest and best use.[19]

C. The Commission's Exploration of the "Interference Temperature" Concept Must Be Tempered By A Recognition of Actual Market Conditions and the Rights of Incumbent Users.

The SPTF recommends that "as a long-term strategy, the Commission shift its current paradigm for assessing interference – based on transmitter operations – toward operations using real-time adaptation based on the actual RF environment through interactions between transmitters and receivers."[20] The suggested metric for this approach is "interference temperature," which would measure the RF power available at the receiving antenna per unit of bandwidth;[21] in turn, the interference temperature metric could be used to "establish maximum permissible levels of interference, thus characterizing the 'worst case' environment in which a receiver would be expected to operate."[22] The SPTF speculates that the "interference temperature" model could facilitate more sharing of existing spectrum among licensed and unlicensed users, provided that the designated "interference temperature" is not exceeded as a whole.[23]

Letter from AT&T Wireless Services, Inc., *et al.*, to William F. Caton, Acting Secretary, Federal Communications Commission, IB Docket No. 95-91 (filed March 8, 2002).

[19] SPTF Report at 23.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 28.

[23] *Id.* at 29-30.

As discussed in the contemporaneous comments filed by Cingular, the "interference temperature" concept is seriously flawed in a number of respects, and other evidence confirms as much. For example, and as already highlighted by the findings of the Commission's Technical Advisory Committee ("TAC"), the interference temperature concept cannot be implemented without a systematic study of the RF noise floor. The TAC has concluded, for example, that "Until [noise floor] information is organized and analyzed, the FCC will not have a firm basis for deciding whether current noise standards are too tight, too loose, or maybe even just right."[24] Equally important, the TAC has warned that there "could be a very serious emerging problem caused by the explosive growth of both intentional and unintentional radio sources," that "we could potentially be entering a period of rapid degradation of the noise environment," and that "[t]he key to getting our hands around this issue will be a good set of models for both intentional and unintentional radiators which can then be used to predict the evolution of the noise background."[25] Quite appropriately, then, the Task Force has urged the Commission "to pursue a detailed study of the advantages and disadvantages of using interference temperature."[26]

Second, the evolutionary nature of wireless services and technologies render any measurement of "interference temperature" a temporary and potentially backward solution at best. As the Commission pushes wireless services towards a flexible use environment where

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[24] FCC Technical Advisory Council, Sixth Meeting Report at 9 (discussing Abstract presented by George H. Hagn). *See also id.*, Fourth Meeting Report at 23 (Annex 4) ("Data on the level and the changes of the noise environment is sorely lacking, . . ., as neither the FCC nor industry has tracked recent noise growth nor modeled how it will increase in the future.").

[25] *Id.*, Third Meeting Report at 1.

[26] Federal Communications Commission Spectrum Policy Task Force, Working Group on Interference Protection, at 28 (Nov. 15, 2002).

wireless technologies may be deployed for any service at any time, it will be increasingly difficult for the Commission to develop a quantifiable measurement of "interference temperature" that will remain reliable for long.[27] The Task Force's Interference Protection Working Group has recognized as much: "If flexible use is to be fully realized, it will become increasingly difficult to pre-determine interference ranges."[28] Indeed, as pointed out in Cingular's contemporaneous comments on the SPTF Report, the "interference temperature" concept (as conceived by the Task Force) could actually *preclude* deployment of more spectrally-efficient digital technologies. For instance, CDMA technology might never have been deployed had "interference temperature" for mobile wireless service been calculated in accordance with the Commission's technical analysis in its *First Report and Order* in the Ultrawideband or "UWB" docket (ET Docket No. 98-153). This is because CDMA technology permitted licensees to operate at levels previously deemed too noisy by prior technologies. The prospect that wireless technology may evolve in a manner which eliminates any need for the interference temperature metric is reason alone for the Commission to evaluate that model very carefully.

Third, BellSouth believes that without further record support it is highly premature for the Task Force to conclude that application of the interference temperature metric will give licensed spectrum users "certainty with regard to the maximum permissible level of aggregated

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[27] MDS/ITFS is a telling example of this phenomenon in just five years, MDS/ITFS has evolved from a one-way, high-power, line-of-sight distributor of analog multichannel video programming to a vehicle for two-way, non-line of sight, low power cellularized distribution of digital broadband services to both portable and fixed locations. *See, e.g.*, MDS/ITFS White Paper at 1-8.

[28] Federal Communications Commission Spectrum Policy Task Force, Report of the Interference Protection Working Group, at 4-5 (Nov. 15, 2002).

noise, or interference, in their band."[29] The Task Force itself acknowledges that no single level of interference temperature will apply to all markets – rather, the Task Force anticipates that "[d]ifferent threshold levels could be set for each band, geographic region or service."[30] This raises the immediate question of how wireless providers can rationally design networks if they are required to accommodate a multitude of different interference temperature levels, particularly for wide-area, regionally-based services such as broadband PCS. In addition, since the interference temperature concept invariably will invite more sharing of spectrum between licensed and unlicensed users, application of the interference temperature metric will expose BellSouth and other wireless licensees to a higher risk of interference from Wi-Fi and other unlicensed devices that, as a practical matter, is impossible to remove from the marketplace even after harmful interference has occurred. The Commission's enthusiasm for Wi-Fi and other license exempt services notwithstanding, this scenario is not a favorable climate for licensee investments in developing and deploying new wireless services.

Finally, any shift to a "receiver-centered" methodology for calculating harmful interference must account for the fact that in many cases there simply is no "quick fix" for making receiver equipment more tolerant of interference.[31] BellSouth believes that the Commission need not and should not attempt to address this problem by adopting and enforcing

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[29] SPTF Report at 29.

[30] *Id.* at 28.

[31] *See, e.g.,* Letter from Paul J. Sinderbrand, Esq. to William F. Caton, Acting Secretary, Federal Communications Commission, IB Docket No. 95-91 (filed April 1, 2002) ("The WCS representatives [have] reviewed the design of WCS customer premises equipment ("CPE") and demonstrated that, assertions to the contrary notwithstanding, there are no filters available today that can both eliminate interference from SDARS to WCS CPE and are practical for use in CPE from the perspective of cost and size.").

mandatory receiver standards which, for the reasons alluded to above, will require long and costly Commission proceedings and are likely to be rendered obsolete by the marketplace in any event. It has been BellSouth's experience that competition within the wireless industry, not regulation, is more than adequate to ensure that wireless providers optimize receiver resistance to interference – in a highly competitive market, customers will stand for nothing less. Absent compelling evidence to the contrary, this principle should remain the foundation of any further Commission inquiry into this issue.[32]

III. CONCLUSION.

Its above-stated concerns aside, BellSouth believes that the SPTF Report is an encouraging first step towards meaningful long-term reform of the Commission's rules and policies for managing spectrum. The ultimate winners of this process may be consumers, who, if the concepts endorsed in the SPTF Report are sensibly applied, stand to benefit from greater choice, enhanced quality of service, and more rapid deployment of new wireless technologies.

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[32] *See, e.g.*, SPTF Report at 31 ("The Task Force generally prefers the use of voluntary receiver performance requirements, over mandatory standards.").

BellSouth thus looks forward to further dialogue with the Commission on the issues discussed herein, both in this proceeding and others related to it.

Respectfully submitted,

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